

1 HONORABLE LAUREN KING
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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE WESTERN DISTRICT OF WASHINGTON**
11 **AT SEATTLE**

12 WASHINGTON ELECTION INTEGRITY) Case No. 2:21-cv-01394-LJK
13 COALITION UNITED, a Washington State)
14 Nonprofit Corporation; DOUG BASLER;)
15 HOWARD FERGUSON; DIANA BASS;) SUPPLEMENTAL BRIEFING
16 TIMOFEY SAMOYLENKO;) RE REMAND
17 MARY HALLOWELL;)
18 SAMANTHA BUCARI; RONALD)
19 STEWART; LYDIA ZIBIN; CATHERINE)
20 DODSON,)
21)
22 Plaintiffs,)
23)
24 v.)
25)
26 JULIE WISE, Director of King County)
27 Elections; KING COUNTY, and DOES)
28 1-30, inclusive,)
29)
30 Defendants.)
31 _____)

32 Per the Court's Order dated August 5, 2022, Plaintiff Washington Election Integrity
33 Coalition United ("WEiCU"), without appearance, and with full reservation of rights,
34 respectfully submits the following supplemental briefing re: remand upon review of *Polo v.*

35 **SUPPLEMENTAL BRIEFING RE REMAND**

1 *Innoventions Int'l, LLC*, 833 F.3d 1193 (9th Cir. 2016) ("*Polo*") and *Britton v. Cnty. of Santa Cruz*
 2 No. 19-CV-04263-LHK, 2020 WL 4197609 (N.D. Cal. 2020) ("*Britton*").

3 As made clear by the *Polo* and *Britton* decisions, where a Defendant asserts that a
 4 Plaintiff lacks Article III standing for claims in a removed action, as is the situation here, the
 5 Court lacks subject matter jurisdiction requiring remand:

6 By arguing that Plaintiffs lack Article III standing, Defendants in effect concede
 7 that the Court lacks subject matter jurisdiction over Plaintiff's Section 1983 claim
 8 because standing is a requisite component of subject matter jurisdiction.

9 *Britton*, at pp. 6-7. Here, as in *Britton*, Defendants are moving for dismissal on grounds
 10 including that Plaintiffs lack standing to bring their claims for injunctive or declaratory relief
 11 (Causes of Action IV through XV) which form the factual and legal basis for Plaintiff's
 12 declaratory, injunctive relief and Section 1983 claims (Causes of Action XVII through XIX).
 13 Defendants' Motion to Dismiss, Document 17, pp. 9-10. Furthermore, Defendants openly
 14 concede, as they must, that "[A]rticle III's standing requirements applies to cases that have been
 15 removed to federal court." Defendants' Motion to Dismiss, Document 17, p. 10, ll. 18-20 (citing
 16 *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), *Lee v. Am. Nat. Ins. Co.*, 260 F.3d 997, 1008
 17 (9th Cir. 2001)).

18 Where Defendants themselves argue that Plaintiffs lack Article III standing to assert their
 19 claims, "Defendants have failed to meet their burden to establish that the Court has subject
 20 matter jurisdiction", and "[b]oth statute and Ninth Circuit precedent . . . make clear that remand
 21 is the only appropriate option . . ." *Britton*, at p.7 (citing *Polo* at 1196), 28 U.S.C. §1447(c).¹
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 27 ¹"Remand is the correct remedy because a failure of federal subject-matter jurisdiction means
 28 only that the *federal* courts have no power to adjudicate the matter. State courts are not bound by

1 In addition, under the *Britton* decision, the Court may not exercise supplemental
2 jurisdiction over WEiCU's Public Records Action based on state law (Cause of Action XVI)
3 where the Court lacks original jurisdiction over any other claim:
4

5 Because supplemental jurisdiction requires that the Court have original
6 jurisdiction over at least one other claim, the Court may not exercise supplemental
jurisdiction over Plaintiffs' state law declaratory relief claim.

7 *Britton*, at p. 10 (citing *Del Toro v. Centene Corp.*, No. 19-CV-05163-LHK, 2020 WL 1643861,
8 at *6 (N.D. Cal. April 2, 2020)).

9 Consequently, in view of *Polo* and *Britton*, this Court lacks subject matter jurisdiction
10 over any claims in the Verified Complaint. Because this Court lacks subject matter jurisdiction,
11 WEiCU hereby stipulates to full remand of all claims in the Verified Complaint notwithstanding
12 its present Motion to Sever and Remand claims under 28 U.S.C. §1441(c)(2). *Polo*, at 1194, 28
13 U.S.C. §1447(c).

15 Respectfully submitted,
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17 VIRGINIA P. SHOGREN, P.C.
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19 Dated: August 15, 2022
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21 By: Virginia P. Shogren, Esq.
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22
23 Attorney for Plaintiff WEiCU
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26 the constraints of Article III." *Polo* at 1196, citing *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617
27 (1989).

28 SUPPLEMENTAL BRIEFING RE REMAND

1 CERTIFICATE OF SERVICE
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3 I hereby certify that on August 15, 2022, I electronically filed the following with the
4 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
5 counsel of record as indicated:

6 SUPPLEMENTAL BRIEFING RE REMAND
7

8 Ann M. Summers
9 David J.W. Hackett
10 Mari Isaacson
11 (Counsel for Defendants)

12 Kevin Hamilton
13 Reina Almon-Griffin
14 Amanda Beane
15 (Counsel for Proposed Intervenor)

16 And I hereby certify that I caused to be served the document via email provided by the following
17 parties who are non CM/ECF participants:

18 Doug Basler
19 Howard Ferguson
20 Diana Bass
21 Timofey Samoylenko
22 Mary Hallowell
23 Samantha Bucari
24 Ronald Stewart
25 Lydia Zibin
26 Catherine Dodson

27 Dated: August 15, 2022

28 *s/ Virginia P. Shogren*
29 Virginia P. Shogren
30 961 W. Oak Court
31 Sequim, WA 98382
32 360-461-5551

33 SUPPLEMENTAL BRIEFING RE REMAND
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